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AUG 28 1990

DIVISION OF
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M/027/607

August 24, 1990

Mr. Stephen D. Alferts
Davis, Graham & Stubbs
P.O.Box 185
Denver, Colorado 80201-0185

Re: THE DRUM MINE

Dear Mr. Alferts:

As you know, Jumbo has requested permission of the State to reactivate the blacklisted heaps. The State Bureau of Water Pollution Control has conditioned the permitting of these heap pads on Jumbo's conducting a leak test. The Division of Oil, Gas and Mining has agreed to allow the leak tests to be conducted, provided that Jumbo bond its activities and obtain Western's consent, because the conducting of this test will necessarily result in the extraction of some minerals.

Jumbo has now posted a cash bond in the approximate amount of \$25,000 for the two heaps. This bond has been accepted by the State. Western, however, indicates that it will not sign the transfer document unless Jumbo assumes the entire reclamation obligation for the property; including the replacement of the top soil.

The replacement of the top soil was an express condition of Western's permit. Western defaulted on its performance of this permit condition and as a result, the State is still holding Western's bond in the approximate amount of \$264,000. Jumbo has offered to assume the reclamation requirement for these two pads and has also offered to accept all reclamation for the balance of the property, except for the replacement of the topsoil. This offer is still on the table for discussion as far as Jumbo is concerned. However, according to your letter of August 10, 1990, Western has conditioned its signing of the transfer papers to permit Jumbo to conduct the leak tests on these two heaps on Jumbo's assuming the obligation for the replacement of top soil on the entire property. This is not acceptable to Jumbo.

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Western defaulted on stockpiling top soil as required by its permit well before the closing of this sale to Jumbo. Jumbo has no obligation to indemnify Western under the express terms of the Agreement and the Quit Claim Deed (paragraph 3), for any defaults that occurred under the various leases, agreements and permits prior to the closing date. This language was a negotiated item. It was inserted into the agreement at the request and insistence of Mr. King to deal with contingencies of this very nature.

Therefore, regardless of when Jumbo first knew of the top soil problem, the express terms of the Quit Claim Deed clearly relieves Jumbo from any indemnity obligation for permit defaults that occurred prior to the closing date of the sale. There is simply no contractual or other basis for your suggestion that Jumbo should now assume this obligation in full as a condition to Western's transfer of responsibility for these two heaps.

However, Jumbo is willing to assume Western's top soil replacement obligation on the following basis: Western shall pay to Jumbo the actual cost of procuring and transporting the top soil to the site, and it shall immediately sign and return the transfer forms requested by the Division so as to permit Jumbo to proceed immediately with the leak tests.

Jumbo estimates that it will take between 37,000 and 50,000 cubic yards of topsoil to meet the reclamation obligation on this property. The cost of purchasing the top soil and transporting it to the property could run anywhere from \$185,000 to \$550,000 at an estimated cost of \$5 to \$10 per cubic yard.

The exact costs for bringing in the top soil can be determined by obtaining bids for this work. Jumbo is willing to commence discussion with the Division and top soil suppliers and trucking contractors in order to determine those costs if Western is interested in pursuing negotiations on this basis. If not, we suggest that the top soil issue is Western's to cure under the express language of the Quit Claim Deed and the Agreement, and of course under its permit with the State of Utah, either by bringing in the missing top soil or through the revegetation plan or such other reclamation plans as Western can get approved by the Division. Jumbo does not intend to assume the top soil reclamation obligation except as set forth above.

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Western has known of Jumbo's requests to recertify these two heaps for a long time. It has been aware of Jumbo's expenditure of significant sums of money in drilling observation wells and monitoring holes adjacent to each pad; neutron-gamma logging of the bore holes and the conducting of other tests required by the Bureau of Water Pollution Control. It also had full knowledge that the Bureau of Water Pollution control and the Division of Oil, Gas and Mining had conditioned the testing of these pads on Western's consent.

Western clearly had an obligation to object and not let Jumbo spend literally thousands of dollars in preparing for these tests if it did not intend to consent to this activity and yet Western has sat quietly by and allowed all of this to occur. Western is estopped by its conduct to deny its consent to these tests. If it fails to give that unconditional consent, Jumbo will feel compelled to seek recovery of its damages incurred in reliance on Western's silence.

I would be pleased to discuss this with you should you wish to do so.

Very truly yours,

CLYDE, PRATT & SNOW P.C.



STEVEN E. CLYDE

CC: Mr. Ed King
Mr. Lowell Braxton
Mr. Don Ostler